

Covered Action Checklist

DOES THE PROPOSED ACTION MEET ALL OF THE FOLLOWING CRITERIA FOR A COVERED ACTION?

[\(Water Code Section 85057.5 \(a\)\)](#)

THE PROPOSED ACTION REQUIREMENTS...	YES
1. Is "... a plan, program, or project as defined pursuant to Section 21065 of the Public Resources Code"?	<input type="radio"/>
2. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh;	<input type="radio"/>
3. Will be carried out, approved, or funded by the state or a local public agency;	<input type="radio"/>
<p>4. Is covered by one or more provisions of the Delta Plan;</p> <p>WR P1 - This policy covers all proposed actions that would export water from, transfer water through, or use water in the Delta.</p> <p>WR P2 - This policy covers all proposed actions that would export water from, transfer water through, or use water in the delta, pursuant to a new contract or agreement or through modification or renewal of an existing contract or agreement, except for water transfers for up to one year in duration.</p> <p>ER P1 - This policy covers all proposed actions that would affect flow in the Delta.</p> <p>ER P2 - This policy covers all proposed actions that would include habitat restoration actions.</p> <p>ER P3 - This policy covers all proposed actions that would include other than habitat restoration actions, but does not apply within any of the following areas:</p> <ul style="list-style-type: none"> • Incorporated cities and their spheres of influence • The Clarksburg Growth Boundary • The Contra Costa County Urban Limit Line • The Mountain House General Plan Community Boundary <p>ER P4 - This policy covers proposed actions that would construct new levees or substantially rehabilitate or reconstruct existing levees in the Delta.</p> <p>ER P5 - This policy covers all proposed actions.</p> <p>RR P1 - This policy covers proposed actions that would encroach upon or diminish a floodway, but does not apply to:</p> <ul style="list-style-type: none"> • Ecosystem projects, ongoing agricultural or flood management activities, or maintenance and repair of existing infrastructures, which would not significantly decrease the existing level of flood protection. <p>RR P2 - This policy covers proposed actions that would encroach upon a floodplain.</p> <ul style="list-style-type: none"> • Ecosystem projects, ongoing agricultural or flood management activities, or maintenance and repair of existing infrastructures, which would not significantly decrease the existing level of flood protection. <p>RR P3 - This policy covers all proposed actions.</p> <p>RR P4 - This policy covers proposed actions that would use state funds for levee operation, maintenance, or improvements in the Delta.</p>	<input type="radio"/>
<p>5. Will have a significant impact on the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and state interests in the Delta."</p> <p><i>("Significant Impact" is defined in Ch. 3 of the Delta Plan as a change in existing conditions that is directly, indirectly, and/or cumulatively caused by a project and that will significantly affect the achievement of one or both of the coequal goals or the implementation of government-sponsored flood control programs to reduce risks to people, property, and State interests in the Delta.)</i></p>	<input type="radio"/>

- If all criteria above are met, the proposed action is a covered action unless a specific statutory or administrative exemption applies. For specific details on what is not considered a covered action, refer to: [\(Water Code Section 85057.5 \(b.\)\)](#) and [\(Ch. 3 of the Delta Plan, Administrative Exemptions\)](#)
- The lead agency will determine whether a proposed action is a covered action, subject to judicial review. **If the lead agency determines** that a proposed action is a covered action, the lead agency is required to file a Certification of consistency with the Delta Stewardship Council (DSC) “with detailed findings as to whether the covered action is consistent with the Delta Plan” prior to commencing with the proposed action.

ADDITIONAL STEPS:

- Have the project proponent and/or the lead agency considered consulting with the Delta Stewardship Council on the covered action?

Working with the Delta Stewardship Council staff during the early development phases of the covered action and prior to filing a Certification of Consistency is a valuable tool to maximize the consistency between the covered action and both the Delta Plan and the coequal goals.

- Have all necessary permits and approvals been obtained prior to filing a Certification of Consistency with the Delta Stewardship Council?

Filing the Certification of Consistency with the Delta Stewardship Council should be the last step in the covered action’s permit and approval process, and should occur after filing of the Notice of Determination where applicable. Filing a Certification of Consistency too early may result in an originally proposed covered action that is significantly altered through the CEQA process or otherwise. If, after filing a certificate of consistency, the project is significantly changed, a new Certification of Consistency will need to be filed with the DSC.

- File a Certification of Consistency and demonstrate consistency with the Delta Plan

The lead agency is required to demonstrate how the covered action meets or fulfills all the policies of the Delta Plan by filing a Certification of Consistency with the Delta Council using an online form found on the DSC’s website. Only the lead agency may file the Certification of Consistency. The online certification form prompts the lead agency for the required information which can be uploaded to the online form. A covered action must be consistent with each of the Delta Plan policies.

- The covered action cannot proceed until the appeals process is complete.

Once the lead agency has filed a Certification of Consistency for a covered action, the Certification of Consistency is displayed on the DSC’s website for public view.

[Water Code 85225.10. \(a\)](#) Any person who claims that a proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact on the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta, may file an appeal with regard to a Certification of Consistency submitted to the council.

The DSC has developed Administrative Procedures Governing Appeals and is included in the Delta Plan as Appendix B. If a valid appeal is filed with the DSC, the Council will hear the appeal within 60 days of the filing of the appeal. The Council will return written findings, either upholding the appeal or denying it, within 60 of the hearing. If multiple appeals are filed on the same covered action, the DSC will consolidate, to the extent practicable, all the appeals into a single hearing before the Council.

- Has the lead agency prepared the covered action record?

If the Certification of Consistency is appealed, the lead agency is required to submit the record to the Delta Stewardship Council within 10 days of being notified of the appeal. The Delta Stewardship Council encourages the lead agency to submit the record that was before the lead agency at the time it made its certification as part of the certificate of consistency. Failure to submit the record is grounds for the council to affirm the appeal.